

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN MITCHELL)
Plaintiff,)
vs.)
EXPERIAN INFORMATION)
SOLUTIONS, INC.)
and)
CBA INFORMATION SERVICES)
and)
BP/CITIBANK SD)
and)
CAPITAL ONE BANK)
and)
CROSS COUNTRY BANK)
and)
DELL FINANCIAL SERVICES)
and)
ORCHARD BANK)
and)
PROVIDIAN FINANCIAL)
Defendants.)
)
Civil Action No. 02-CV-4442

ORDER

BY THE COURT:

Fullam, J.

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN MITCHELL)	
	Plaintiff,)
vs.)	
EXPERIAN INFORMATION)	Civil Action No. 02-CV-4442
SOLUTIONS, INC.)	
and)	
CBA INFORMATION SERVICES)	
and)	
BP/CITIBANK SD)	
and)	
CAPITAL ONE BANK)	
and)	
CROSS COUNTRY BANK)	
and)	
DELL FINANCIAL SERVICES)	
and)	
ORCHARD BANK)	
and)	
PROVIDIAN FINANCIAL)	
Defendants.)	
)	

**PLAINTIFF KEVIN MITCHELL'S MOTION TO COMPEL DEFENDANT CAPITAL
ONE BANK'S ANSWERS TO PLAINTIFF'S INTERROGATORIES, REQUEST FOR
PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS**

Plaintiff, Kevin Mitchell, by and through his undersigned attorneys, hereby moves this Honorable Court to enter the accompanying order compelling Defendant Capital One Bank (hereafter "Capital One") to provide Plaintiff with its answers to Plaintiff's Interrogatories, Request for Production of Documents and Requests for Admissions, without objections, and, in support thereof, alleges the following:

1. This is an action for damages brought by an individual consumer against the Defendants for violations of the Fair Credit Reporting Act (hereafter the "FCRA"), 15 U.S.C. §1681 *et seq.*, as amended, and various other laws of the Commonwealth of Pennsylvania which

was commenced by the filing of a Complaint on or about July 3, 2002, in the United States District Court For the Eastern District of Pennsylvania.

2. On July 15, 2002, Plaintiff served the Complaint upon the Defendant Capital One.

3. On September 9, 2002, Defendant Capital One served an Answer with Affirmative Defenses upon Plaintiff.

4. On December 10, 2002, Plaintiff forwarded their Self-Executing Disclosures to Defendant Capital One pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.

5. On December 10, 2002, Plaintiff forwarded a First Set of Interrogatories, Request For Production of Documents and Requests for Admissions to Defendant Capital One.

6. On February 26, 2003, having not received Defendant Capital One's Answers to Plaintiff's Discovery Requests, Plaintiff's counsel sent a letter to Defendant Capital One's counsel informing him that Plaintiff's counsel had still not received the untimely Answers to Interrogatories, Request for Production of Documents and Requests for Admissions, and that Plaintiff would be forced to file a motion to compel if he did not receive them due to the approaching discovery and motions deadline. (A copy of Plaintiff's counsel's correspondence dated February 26, 2003 is attached hereto as Exhibit "A" and is incorporated herein).

7. On May 6, 2003, still having not received Defendant Capital One's Answers to Plaintiff's Discovery Requests, Plaintiff's counsel sent another letter to Defendant Capital One's counsel informing him that Plaintiff's counsel had still not received the untimely Answers to Interrogatories, Request for Production of Documents and Requests for Admissions, and that Plaintiff would be forced to file a motion to compel if he did not receive them due to the approaching discovery and motions deadline. (A copy of Plaintiff's counsel's correspondence dated May 6, 2003 is attached hereto as Exhibit "B" and is incorporated herein).

8. To date, Defendant Capital One has failed to provide Plaintiff with its answers to Plaintiff's First Set of Interrogatories, Request For Production of Documents and Requests for Admissions.

9. Plaintiff suffers hardship and prejudice as a result of Defendant Capital One's failure to provide him with pertinent and relevant discovery that he has requested.

10. Plaintiff has attempted in good faith to resolve this discovery dispute. Plaintiff's Rule 26.1(f) Certification of Counsel is attached.

11. To date, Defendant Capital One has not provided Plaintiff with these outstanding items, and Plaintiff respectfully requests that the Court enter the accompanying order compelling it to do so.

WHEREFORE, based upon the foregoing, Plaintiff Kevin Mitchell respectfully requests that this Honorable Court enter the accompanying Order compelling the Defendant Capital One to provide Plaintiff with its Answers to Plaintiff's Interrogatories, Request For Production of Documents and Requests for Admissions, without objections, within five (5) days of the date of this Order or risk further sanctions upon application to the Court.

RESPECTFULLY SUBMITTED,

FRANCIS & MAILMAN, P.C.

BY: _____

JAMES A. FRANCIS, ESQUIRE
MARK D. MAILMAN, ESQUIRE
Attorney for Plaintiff
Land Title Building, 19th Floor
100 South Broad Street
Philadelphia, PA 19110
(215) 735-8600

Dated: May 14, 2003

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN MITCHELL)	
	Plaintiff,)
vs.)	
EXPERIAN INFORMATION)	Civil Action No. 02-CV-4442
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CROSS COUNTRY BANK)	
and)	
DELL FINANCIAL SERVICES)	
and)	
ORCHARD BANK)	
and)	
PROVIDIAN FINANCIAL)	
Defendants.)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF KEVIN MITCHELL'S
MOTION TO COMPEL DEFENDANT CAPITAL ONE BANK'S ANSWERS TO
PLAINTIFF'S INTERROGATORIES, REQUEST FOR PRODUCTION OF
DOCUMENTS AND REQUESTS FOR ADMISSIONS**

Defendant Capital One should be compelled to provide Plaintiff with its Answers to Plaintiff's First Set of Interrogatories, Request for Production of Documents and Requests for Admissions, without objection, within five (5) days of the accompanying proposed order.

It is blackletter law that a party, upon reasonable notice to other parties and all persons effected thereby, may apply for an order compelling disclosure or discovery. Fed. R. Civ. P. 37.

On December 10, 2002, Plaintiff forwarded their First Set of Interrogatories, Request For Production of Documents and Requests for Admissions to Defendant Capital One. To date, Defendant Capital One has failed to provide Plaintiff with its Answers to Plaintiff's First Set of Interrogatories, Request for Production of Documents and Requests for Admissions despite

numerous requests by Plaintiff's counsel. Plaintiff's counsel on February 26, 2003 and May 6, 2003, sent a letter to Defendant Capital One's counsel informing him that Defendant Capital One's Discovery answers were overdue and that Plaintiff would be forced to file a motion if Defendant Capital One did not provide them.

To date, Defendant Capital One has still not provided Plaintiff with its answers to Plaintiff's outstanding discovery requests.

Plaintiff suffers hardship and prejudice as he is unable to discover pertinent and relevant information that he has requested. As Defendant Capital One has not provided Plaintiff with these documents and information, the Court should enter the accompanying order compelling Defendant Capital One to provide Plaintiff with its Answers to Plaintiff's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions, without objections, within five (5) days of the date of the order.

RESPECTFULLY SUBMITTED,
FRANCIS & MAILMAN, P.C.

BY: _____
JAMES A. FRANCIS, ESQUIRE
MARK D. MAILMAN, ESQUIRE
Attorney for Plaintiff
Land Title Building, 19th Floor
100 South Broad Street
Philadelphia, PA 19110
(215) 735-8600

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LOCAL RULE 26.1(f) CERTIFICATION OF COUNSEL

The undersigned counsel of Plaintiff Kevin Mitchell (“Plaintiff”), certify, pursuant to Local Rule 26.1(f) that he has attempted in good faith to resolve this discovery dispute.

On February 26, 2003 and May 6, 2003, having not received Defendant Capital One’s Answers to Plaintiff’s Discovery Requests, Plaintiff’s counsel sent a letter to Defendant Capital One’s counsel informing him that Plaintiff’s counsel had still not received the untimely Answers to Interrogatories, Request for Production of Documents and Requests for Admissions, and that Plaintiff would be forced to file a motion to compel if he did not receive them due to the approaching discovery and motions deadline.

Subsequently, Plaintiff's counsel has repeatedly contacted Defendant Capital One's counsel and inquired as to when the outstanding answers to Plaintiff's discovery would be forthcoming.

Notwithstanding the above, to date, Plaintiff has not received Answers to Plaintiff's First Set of Interrogatories, Requests for Production of Documents and Request for Admissions nor has Plaintiff's counsel been told by Defendant Capital One's counsel when Plaintiff's discovery will be forthcoming.

RESPECTFULLY SUBMITTED,

FRANCIS & MAILMAN, P.C.

BY: _____

JAMES A. FRANCIS, ESQUIRE
MARK D. MAILMAN, ESQUIRE
Attorneys for Plaintiff
Land Title Building, 19th Floor
100 South Broad Street
Philadelphia, PA 19110
(215) 735-8600

Dated: May 14, 2003